question, referred to the French law in its totality, including its rules of the conflict of laws, and as the French law would decide the case according to the law of the country to which the testator belonged (*lex patriae*) the New York court should apply New York law. *Held,* that sec. 47 of the Decedent Estate law referred to the French law relating to the lapsing of legacies, and not to the French law in its totality, including the conflict of laws. Referee's report, approved by the Surrogate of New York County. *In the Matter of the Judicial Settlement of the Accounts of Henry Overing Tallmadge, Executor of Coster Chadwick, Deceased* (1919) 62 N. Y. L. J. 215.

See COMMENTS, *supra,* p. 214.

CONTRACTS—BREACH—WAIVER—DAMAGES.—By a contract with the defendant the plaintiff obtained the exclusive selling agency, within a certain territory, of machines which the defendant manufactured. After the plaintiff entered into this business, the defendant forbade his taking orders for machines to be used in "public service," on the ground that another party had the exclusive privilege of such sales. The plaintiff continued the business for a while and then terminated the agency. He sued for the damages which resulted from this limitation of his agency. The defendant contended that the plaintiff had waived this breach of contract and therefore could not recover damages. *Held,* that he could recover, since waiver of a breach does not forfeit a right of action for the resulting damages. *Hoffer v. Hooven-Owens-Rentschiler Co.* (1919, Sup. Ct.) 177 N. Y. Supp. 720.

The distinction between a waiver of excuse for future nonperformance and a forfeiture of a right to damages, both arising from a breach of contract by the other party thereto, is undoubtedly sound. In support of this, see (1918) 28 YALE LAW JOURNAL, 86.

MINES AND MINERALS—INTERFERENCE BY ABANDONED OIL WELL WITH LIVE WELL.—After the plaintiff had sunk a well on his premises which produced oil, the defendant sunk a well on his premises near the plaintiff's well, which proved a non-producer and was abandoned. It caused air to leak into the plaintiff's pump, resulting in loss of suction and a material reduction in the production of oil from the plaintiff's well. The defendant refused to close his well, though he could have done so without trouble or expense by putting back the plug which had been taken out. The plaintiff sued for an injunction and damages. *Held,* that the plaintiff was entitled to relief. *Higgins Oil & Fuel Co. v. Guaranty Oil Co., Ltd.* (1919, La.) 82 So. 206.

See COMMENTS, *supra,* p. 213.

NEGLIGENCE—CONTRIBUTORY NEGLIGENCE—LAST CLEAR CHANCE.—The plaintiff's intestate negligently started across the defendant's track and was killed by an engine operated by employees of the defendant. The employees exercised due care and did all they could to avert the accident. The plaintiff sued for damages. *Held,* that she could not recover, with a dictum that where "negligence of the railroad and of the person injured are concurrent and continue up to the moment of the accident," a railroad cannot be held liable under the doctrine of "last clear chance." *Nolan v. Illinois Central R. R.* (1919, La.) 82 So. 590.

The court seems to apply the concept that "last clear chance" means sole physical power in the defendant, after he has actually obtained knowledge of the plaintiff's danger, to avoid the injury. Other authority finds the require-